IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 687 OF 1997

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

None for the appellant.
Mr. Ramesh Akrale h/f Smt. S.M. Mutalik for the respondents.
Mr. P.K. Dhakephalkar for respondents 1A to 1J.

CORAM : ANOOP V. MOHTA, J.

DATE : 16.12.2005

. Heard. The matter on was board on 15/12/2005, being part-heard it was kept on 16/12/2005. None appeared for the appellant again. The proceeding shows that the appellant was absent on various earlier occasion, such as 6/9/2004, 9/12/2005. Today again none appeared for the appellant.

2. Heard the learned Counsel

appearing for the contesting respondents. There is a concurrent findings given by the Courts below, whereby, the original plaintiffs have been declared as a sole owner of the suit premises. The appellant/defendants 1 and 2 have been directed to hand over the vacant possession of the suit premises within 3 months from the date of order i.e. 12 February, 1992. The learned Counsel appearing for the respondents submitted that the appellant original defendant No.1 Sadashiv Sali has already vacated the premises.

3. The appeal preferred by the original defendants was dismissed by impugned order dated 30th June, 1997. In the result the trial Court’s order was confirmed.

4. Both the courts come to the positive conclusion that the original plaintiffs have proved his absolute

ownership over the suit property on the basis of sale deed dated 5/12/1967. They proved that the construction of the three rooms made by them in the year 1969, out which two rooms were in possession of the appellants/defendants 1 and 2 as a sympathetic consideration. The plaintiff had allowed them to occupy the same premises. it is clear finding that the defendants-appellants failed to prove their joint ownership and possession over the suit property and or the plot purchased and construction made over it was out of the funds of the partnership. They further failed to prove that they become owner of the suit property by way of adverse possession.

5. Appeal was admitted. There was no question of law framed.

6. It is very clear from the issues as decided by the Courts that a person cannot claim ownership of the suit

property based on the adverse possession, specially when the defendants themselves made out their basic case, that they are

the owners of the suit property, as they have purchased the same out of the funds of the partnership firm. Having raised this plea of ownership, based on the pleading raised, it is difficult to accept the case of the appellant-defendants of adverse possession. A theory of adverse possession always has a foundation of others ownership. In the present case, the appellant themselves claiming ownership of the property in question having purchased the same and constructed out of the funds of the partnership firm. This plea of adverse possession itself destroyed their own case or vice versa. The Courts below therefore, right in rejecting the case of the defendants-appellants.

5. Taking all this into account and as there is no substantial question of law involved in this matter and, as no case has been made out to interfere with the concurrent findings arrived at by the Courts below, while decreeing the suit in favour of the plaintiff.

6. Ad interim order granted and confirmed by order dated 12/11/1997 stands vacated.

6. In view of this, Second Appeal is dismissed.

(ANOOP V.MOHTA,J.]